

U.S. Bank N.A. v Joseph

2026 NY Slip Op 30155(U)

January 9, 2026

Supreme Court, Kings County

Docket Number: Index No. 508170/2021

Judge: Derefim B. Neckles

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FSMP of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, 11201 on the 9th day of January, 2026.

P R E S E N T:

HON. DEREKIM B. NECKLES,
Justice.

-----X
U.S. BANK NATIONAL ASSOCIATION,

Plaintiff,

- against -

Index No. 508170/2021

ODANIE JOSEPH; ET AL,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed
Opposition Affirmation to Motion
Reply Affirmation to Opposition

133-136
138
142-144

Upon the foregoing papers in this proceeding, plaintiff moves (under mot. seq. 3) for an order (1) pursuant to CPLR § 2221(d), granting Plaintiff leave to reargue the Short Form Order entered Marh 4, 2025 (the "Order"), which improperly granted Defendant Joseph Odanie's ("Defendant), cross-motion to dismiss the Complaint (the "Cross-Motion"), and upon reargument, (2) vacating the Order, and granting Plaintiff's Motion for Summary Judgment (Mot. Seq. 001) in its entirety.

Background

Plaintiff filed a prior action regarding the subject mortgage on April 3, 2012. By order dated April 17, 2017, the court granted plaintiff's motion for summary judgment and denied defendant's cross-motion for summary judgment. Following an appeal, the

Appellate Division reversed the court's April 17, 2017 decision, and dismissed the action for plaintiff's failure to comply with RPAPL 1304, by order dated September 16, 2020.

Plaintiff then commenced the instant action on April 7, 2021, to foreclose on the same mortgage. Defendant filed an answer on April 20, 2021. Plaintiff then moved for summary judgment, and defendant cross-moved to dismiss, asserting that the action was time-barred. By order dated March 4, 2025, the court denied plaintiff's motion and granted defendant's cross-motion, finding that the action was time-barred by the statute of limitations.

Plaintiff now moves to reargue, contending that the court misapprehended CPLR 205-a, and that the action was timely pursuant to that section.

Discussion

I. Motion to Reargue

"A motion for leave to reargue 'shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion' " (*Grimm v. Bailey*, 105 A.D.3d 703, 704, quoting CPLR 2221[d][2]; see *Matter of American Alternative Ins. Corp. v. Pelszynski*, 85 A.D.3d 1157, 1158).

Here, plaintiff asserts that the court misapprehended the law, and plaintiff would have been entitled to the benefits of savings statute in CPLR 205-a, because plaintiff recommenced the action within six-months of the prior action's termination (including COVID tolling) and the prior action's dismissal regarding plaintiff's noncompliance with RPAPL 1304, was not considered a judgment of the merits.

The Appellate Division recently held in *GMAC Mortgage, LLC v. Randolph Leidl*, that “dismissal of a complaint for the failure to satisfy a condition precedent to suit is not a ‘final judgment upon the merits’ for the purposes of CPLR 205(a)” (242 A.D.3d 834, 836 [2d Dept 2025]). Accordingly, plaintiff is entitled to the benefits of CPLR 205-a, and the instant action is timely.

II. Plaintiff’s Motion for Summary Judgment

In opposition to plaintiff’s motion for summary judgment, defendant contends that plaintiff failed to satisfy the condition precedent of serving defendant with the contractual notice of default in accordance with the terms of the mortgage agreement, because they mailed the notice of default to defendant’s counsel’s office, and not to defendant at the property address.

Pursuant to paragraph 15 of the mortgage agreement, plaintiff promises to mail a notice of default by first class mail to the property address, unless the borrower notifies plaintiff of an address change. Here, defendant contends that her address had been the same since 2006, including at the time of the mailing, and she never informed plaintiff of an address change. Defendant further points that plaintiff’s attached exhibits list the property address as defendant’s address. Plaintiff in reply does not offer an explanation as to why the notice was sent to defendant’s counsel, and not defendant at the property address.

To be entitled to summary judgment, defendant must make a prima facie showing that she did not apprise the prior lenders that the attorney’s address was the appropriate

address to use for service of the notice, which she has done (*see Citibank, N.A. v. Conti-Scheurer*, 172 A.D.3d 17, 24 [2d Dept 2019]).

Accordingly, it is

ORDERED that plaintiff is granted leave to reargue pursuant to CPLR § 2221(d), however upon reargument, the court adheres to its prior determination albeit on different grounds, that plaintiff failed to comply with the condition precedent as set forth in the mortgage agreement.

This constitutes the decision and order of the court.

E N T E R,



HON. DEREFIM B. NECKLES
J. S. C.